

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ben Gilmore	Team: Team # 4	CCRB Case #: 201403897	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 04/13/2014 11:19 PM	Location of Incident: 60th Avenue and 69th Place	Precinct: 104	18 Mo. SOL 10/13/2015	EO SOL 10/13/2015	
Date/Time CV Reported Mon, 04/14/2014 2:40 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/23/2014 4:00 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Day	04758	940056	HARBOR

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Greg Lewsza	00761	949204	104 PCT
2. SGT Daniel Delaney	02297	945653	104 PCT
3. POM Michael Oswald	08354	949431	104 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Thomas Day	Force: PO Thomas Day used physical force against § 87(2)(b)	

### Case Summary

This complaint was reported to IAB on April 14, 2014 (encl. b1-2). At approximately 11:19 p.m. on April 13, 2014, § 87(2)(b) was walking in the vicinity of 60<sup>th</sup> Avenue and 69<sup>th</sup> Place in Queens. He was intoxicated and assaulted a woman, identified by the investigation as § 87(2)(b). After a physical encounter with § 87(2)(b)'s husband (identified by the investigation as § 87(2)(b)), police officers responded to the scene, as did § 87(2)(b)'s mother, § 87(2)(b) and brother, § 87(2)(b). § 87(2)(b) was arrested and placed inside a marked RMP assigned to Sgt. Daniel Delaney and PO Michael Oswald. PO Thomas Day then took § 87(2)(b) out of the RMP while handcuffed and allegedly dropped him on the ground. PO Day then allegedly placed his foot on § 87(2)(b)'s head and applied pressure (**Allegation A**).

### Mediation, Civil and Criminal Histories

This case was not eligible for mediation. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] (encl. e1-2). A request to the New York City Comptroller's Office for any Notice of Claim filed in regard to this incident was submitted on December 16, 2014. The results are pending and will be included in the case file upon receipt.

### Civilian and Officer CCRB Histories

PO Day has been a member of the NYPD for 8 years and has been the subject of 9 allegations, none of which were substantiated (encl. a1) § 87(2)(b) (encl. a2).

### Civilian Statements

**Victim:** § 87(2)(b) (encl. b7-12)

- § 87(2)(b) acknowledged being highly intoxicated and that he assaulted § 87(2)(b) for no apparent reason. Her husband pushed § 87(2)(b) to the ground and held him until police arrived. § 87(2)(b) did not fight with § 87(2)(b) and did not sustain injuries from the interaction with him.
- When PO Day pulled him out of the first RMP, § 87(2)(b)'s legs got caught inside of the vehicle. After being taken out of the RMP he was "freaking out," cursing, spitting blood at the officers, and kicking. Once on the ground, PO Day placed his foot on his head and applied pressure. PO Day told § 87(2)(b) to stop filming or she would be arrested.
- § 87(2)(b) was treated at § 87(2)(b) and received stitches under his chin. He stated that he received a fracture to the left side of his skull and fluid from his brain exited his ear. Aside from the laceration under his chin, he did not know how the injuries were sustained.

**Complainant/Witness:** § 87(2)(b)

- § 87(2)(b)'s statement to IAB as reported in the IAB log (encl. b2) notes that PO Day dropped § 87(2)(b) to the ground. It appeared that § 87(2)(b)'s feet may have gotten caught inside the RMP and PO Day did not realize this as § 87(2)(b) was being pulled out. PO Day then put his knee on § 87(2)(b)'s head and § 87(2)(b) began to bleed from his face. § 87(2)(b) appeared to be unconscious when this occurred.

**Victim:** § 87(2)(b) (encl. b13-18)

- § 87(2)(b) did not believe that § 87(2)(b) resisted or moved his body as PO Day took him out of the RMP. § 87(2)(b)'s feet were caught in the seat as he was pulled out. She did not allege that PO Day placed his foot on § 87(2)(b)'s head, but did claim that PO Day kicked § 87(2)(b) on his

side as the other officers held § 87(2)(b) down and § 87(2)(b) spat blood at the officers. She also stated that PO Day pushed the side of § 87(2)(b)'s face against the pavement.

- While about six officers surrounded § 87(2)(b), § 87(2)(b) was in the street. She told the officers to leave § 87(2)(b) alone and walked around the police car to get a better view of him. She asked the officers why they hurt him. An unidentified officer, described as a 5'3" tall black female in uniform, told § 87(2)(b) that she would be arrested if she did not move off the street and onto the sidewalk.

**Witness:** § 87(2)(b) (encl. b23)

- § 87(2)(b) was walking her dog when § 87(2)(b) hit her. Her husband tackled § 87(2)(b) to the ground. She called 911 and police responded. Her husband did not punch or kick § 87(2)(b) and § 87(2)(b) was not injured prior to the officers' arrival. § 87(2)(b) was placed in an RMP. He was acting "crazy," kicking at the officers.
- § 87(2)(b) looked over and saw § 87(2)(b) falling, on his own, out of the RMP, onto the pavement. She did not see any officer force him to the pavement. His chin or face made contact with the pavement, and he began bleeding. § 87(2)(b)'s mother arrived and began yelling that the police were beating her son. § 87(2)(b) said that no one was beating anyone.
- Soon after, an ambulance arrived at the scene and § 87(2)(b) was taken away. § 87(2)(b) did not see an officer kick § 87(2)(b), place a hand on his face, or force him to make contact with the pavement.

**Witness:** § 87(2)(b) (encl. b24)

- § 87(2)(b) arrived at the scene after the police had arrested § 87(2)(b). As an officer (identified as PO Day) tried to move § 87(2)(b) from one RMP to another, § 87(2)(b) "flipped out," biting and kicking. PO Day was holding § 87(2)(b) by his arm. § 87(2)(b) believed § 87(2)(b) did actually bite PO Day in the hand or arm at one point. § 87(2)(b)'s kicking and biting caused PO Day to let go of him, and as a result he fell to the ground face-first and sustained injuries. He was bleeding from his mouth area, which § 87(2)(b) believed happened because he hit his face on the ground. She believed that § 87(2)(b) fell because he was moving around and kicking, and that he slipped out of the officer's grasp. She did not believe PO Day intentionally dropped him.
- Once § 87(2)(b) fell to the ground, he yelled and continued to move around although not as much. § 87(2)(b) did not recall § 87(2)(b) spitting at officers. Once on the ground, officers tried to restrain him on the ground before picking him up. It appeared they were trying to hold him so he did not get away. § 87(2)(b) did not see an officer place his knee against § 87(2)(b)'s back, push his face against the ground or step on his face.
- § 87(2)(b)'s mother, brother and the brother's wife were at the scene. § 87(2)(b) did not hear an officer tell § 87(2)(b)'s mother that she would be arrested if she did not move back. The mother was "yelling a little bit" but she did not remember her being "out of control." § 87(2)(b) did not recall officers tell anyone to stay back.
- § 87(2)(b) identified her stepfather (identified by the investigation as § 87(2)(b)) only as § 87(2)(b)" and provided his telephone number.

**Witnesses:** § 87(2)(b) (encl. b19-22)

- These witnesses were all identified as individuals who called 911 during the incident. Based on their telephone statements, none seem to have witnessed the moment of the incident when the alleged misconduct occurred.

- § 87(2)(b) stated that it looked like the husband was choking § 87(2)(b) as he held him down, before the officers arrived. As far as the officers' behavior, she described only the officers separating the two men and talking to each of them before she left the scene.
- § 87(2)(b) who also called 911, saw § 87(2)(b) being moved from a marked RMP to an ambulance. She reported seeing large amounts of blood, and appears to have been watching the aftermath of the alleged misconduct.
- § 87(2)(b) only reported § 87(2)(b) being transferred to an ambulance and saw no injuries or anything that would cause injury, but he also said his view of the incident was obstructed.
- § 87(2)(b) who refused to provide her full name or a verified statement, said that a male civilian kicked § 87(2)(b) 2-3 times in his face, after which officers arrived and separated them. She stated that she left 5 minutes after the officers arrived and did not describe any force being used by the officers.

#### **Attempts to Contact Civilians**

- Attempts were made to obtain testimony from § 87(2)(b)'s siblings, § 87(2)(b) and § 87(2)(b) and from § 87(2)(b). However, these individuals did not cooperate with the investigation's attempts to obtain statements (encl. e3-17).
- Because a number of unidentified neighbors were reportedly witnesses to the incident, fieldwork was conducted on May 30, 2014. Several individuals were questioned and stated that they did not witness the incident. Please-call letters were left at neighboring residences where no one answered the door (encl. b25).

#### **Officer Statements**

##### **Subject Officer: PO THOMAS DAY** (encl. c22-24)

- PO Day stated that he arrived at the scene once § 87(2)(b) had already been placed inside Sgt. Delaney's RMP, at which point he already had injuries to his face – a scratch under one eye and a scratch on his nose.
- PO Day was ordered to transfer § 87(2)(b) from Sgt. Delaney's RMP to his own. As he pulled § 87(2)(b) out by his arms, § 87(2)(b) struggled, shaking back and forth and shimmying his body, causing PO Day to lose grip of him. § 87(2)(b) fell and hit his chin on the ground. This resulted in a laceration. PO Day denied intentionally dropping § 87(2)(b) to the ground or pushing him to the ground.
- An ambulance was called immediately after § 87(2)(b) fell. As he lay on the ground, § 87(2)(b) kicked, screamed and spat. The kicks and spit did not make contact with anyone. PO Day grabbed his legs to prevent him from kicking anyone. PO Day did not do anything else while waiting for the ambulance. He did not pick § 87(2)(b) up and drop him, kick him or force his face against the ground. An officer may have pushed § 87(2)(b)'s face to the side to prevent him from spitting on anyone, but he did not recall who may have done this.
- PO Day might have forcefully pushed § 87(2)(b)'s head against the ground, but he did not recall.

##### **Witness Officer: PO GREG LEWSZA** (encl. c17-19)

- When PO Day and PO Lewsza arrived on scene, § 87(2)(b) was sitting on the ground and already had bruising to his face and blood on his chin. He screamed at PO Day and called him a "fat fuck." The decision to transfer § 87(2)(b) to PO Day's RMP came because Sgt. Delaney was going to respond to a burglary in progress.
- Inside the first RMP, § 87(2)(b) was calling PO Day a "fat fuck" and kicking the inside door. PO Lewsza stood behind PO Day as he tried to pull § 87(2)(b) out of the RMP by his shoulders but

- § 87(2)(b) hooked his feet inside the car and bit PO Day's arm, causing PO Day to pull his arm away. This in turn caused § 87(2)(b) to fall down and hit his head against the pavement.
- § 87(2)(b) kicked and spat at officers while on the ground waiting for an ambulance. PO Lewsza held his legs while PO Day and PO Oswald held his arms. Sgt. Delaney occasionally approached to help hold § 87(2)(b) down.
  - PO Lewsza did not see any officer do anything to prevent § 87(2)(b) from spitting, because his attention was on § 87(2)(b)'s feet and legs. He did not see any officer put their hand on § 87(2)(b)'s face.

**Witness Officer: SGT. DANIEL DELANEY** (encl. c37-39)

- Sgt. Delaney and PO Oswald were the first officers to arrive on scene. § 87(2)(b) and § 87(2)(b) (whom Sgt. Delaney called "§ 87(2)(b)") were on their feet, grappling with each other. Sgt. Delaney and PO Oswald separated them, and § 87(2)(b) was placed under arrest. § 87(2)(b) had abrasions to his face. He yelled obscenities and was placed into an RMP without incident.
- § 87(2)(b) prevented PO Day from taking him out of the RMP by moving his torso and hooking his feet, and he fell to the ground on his face. PO Day told Sgt. Delaney that § 87(2)(b) bit him on his arm. While awaiting EMS, § 87(2)(b) attempted to kick officers, moved his torso and spat blood. Nothing was done in order to prevent him from spitting. Sgt. Delaney did not see an officer force § 87(2)(b)'s face to the ground, kick him or drop him back onto the ground.

**Witness Officer: PO MICHAEL OSWALD** (encl. c30-32)

- PO Oswald's statement was largely consistent with that of Sgt. Delaney. He did not see the moment when § 87(2)(b) fell to the ground because he had gone around the RMP to get to his feet. While § 87(2)(b) was on the ground kicking and spitting, PO Oswald turned him to his side to prevent officers from being kicked. Some of the kicks made contact with PO Oswald's legs. No officer dropped § 87(2)(b) to the ground again, kicked him, or forced his head to the side.

**Findings and Recommendations**

**Allegations Not Pled**

- Although § 87(2)(b) alleged that an officer threatened to arrest § 87(2)(b) for recording the incident, she relayed that part of the incident differently, testifying that an officer told her she would be arrested if she did not move off the street and onto the sidewalk. She acknowledged moving into the street toward § 87(2)(b) as he was on the ground and being arrested. § 87(2)(g)

**Recommendations**

**Allegation A – Force: PO Thomas Day used physical force against § 87(2)(b)**

§ 87(2)(b) sustained several documented injuries. In addition to the laceration on his chin, he received a large bruise under his right eye, which is evident in his arrest photograph (encl. b6) and a photograph he provided to the CCRB (encl. a8). Photographs reportedly taken at the scene by § 87(2)(b) show § 87(2)(b) lying faced down with blood on the ground around his head (encl. a5-7). According to his medical records (encl. Medical Records folder), § 87(2)(b) had lacerations to the chin and left inner ear, abrasions to the right eyebrow, knees, and left forehead, and a black eye. There was a small amount of fluid in the auditory canal. The laceration to his chin was treated with four sutures. No fractures were noted. § 87(2)(g)

§ 87(2)(g)  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

§ 87(2)(g)  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

[Redacted] One of the Medical Treatment of Prisoner forms created (encl. d17) states, § 87(2)(g)  
[Redacted] that the injury to § 87(2)(b)'s left eye and scratches to his face were present by  
the time officers arrived, and that they were sustained when he attempted to flee and § 87(2)(b)  
[Redacted]'s husband held him down. § 87(2)(g).

§ 87(2)(b) stated § 87(2)(b) was not injured when her husband held him down until the  
police arrived. She also did not see any officer make contact with his face, or force him against the  
pavement after he fell. PO Day § 87(2)(g)  
[Redacted] stated that he might have forcefully pushed § 87(2)(b)'s head against the  
ground but did not recall.

§ 87(2)(g)  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted].

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date